

Remarks

Claim Amendment

Claims 27 and 40 have been amended to recite sequence identifiers, as requested by the Examiner. A substitute Sequence ID Listing that includes the new sequence identifiers SEQ ID NO: 29 and SEQ ID NO: 30 is concurrently submitted.

Claims 43-48 are withdrawn as relating to a non-elected invention.

Examiner's Restriction

The Examiner has required restriction between the two following invention Groups:

Group I, claim(s) 27-43, drawn to a disease resistant plant, seed thereof, and a plant transformation method.

Group 2, claim(s) 44-48, drawn to a method of selecting a plant using antibody, and a plant transformation method.

The Examiner has further required election of a species from the elected invention Group as follows:

For Group I, election of one DNA sequence (SEQ ID NO: 1, 2, 9, 13, 15, or 19, or a DNA sequence encoding one of the polypeptides (SEQ ID NO: 2, 6, 10, 14, 16, 20, 26, 27, or 28).

For Group II, election of an isolated polypeptide sequence from claim 28.

Applicant's Restriction election

Applicant elects Group I, Claims 1-42, reciting disease resistant plants, seed thereof, and transformation methods. Non-elected claims 43-48 are withdrawn without prejudice to refile in a Divisional Application.

Applicant further elects the DNA sequence encoding the polypeptide of SEQ ID NO: 2 as a first species of the Elected Invention Group for examination on the merits, with the additional species to be searched on finding novelty of the first searched DNA sequence encoding polypeptide.

In view of the above amendments and remarks, Applicant respectfully requests Examination of the claims on the merits. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at (612) 371-5268.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903

Date: October 17, 2008

/Denise M. Kettelberger/

Denise M. Kettelberger, Ph.D., J.D.

Reg. No. 33,924

DMK:lek

23552

PATENT TRADEMARK OFFICE